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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/325,296 06/03/99 REIDENBACH

B 1493-M

EXAMINER

QM12/0327

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ART UNIT	PAPER NUMBER

3727
DATE MAILED:

10
03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/325,296	Applicant(s) REIDENBACH, BRYAN L.	
	Examiner Nathan J. Newhouse	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-14,17 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-14,17 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: |

DETAILED ACTION

Continued Prosecution Application

1. The request filed on January 16, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/325,296 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 5-14, 17 and 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Throughout the specification and drawings, applicant describes a plurality of inner skirts to engage with the bottle to cause the breakaway skirt to remain with the bottle upon unscrewing. Applicant has not described in the specification that the breakaway skirt could function with only one inner skirt(claim 17), only two inner skirts(claims 1 and 6), and only one upper inner skirt and one lower inner skirt(claim 14). Furthermore, it would appear that in order for the breakaway skirt to engage properly with the bottle neck, a plurality of inner skirts(embodiment of claim 1 and 17) or

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upper inner and lower inner skirts(embodiment of claim 14) would have to be arranged around the circumference.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barriac '030.

Barriac teaches a closure 23 having a breakaway skirt comprising an outer skirt 28 and a plurality of inner skirts 30 formed by slots 30a connected by a plurality of frangible bridges 29. The inner skirts have wings 34 to engage the container neck.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by the EP reference(541,466).

The EP reference teaches a closure having a breakaway band extending downwardly from a plurality of frangible links. The breakaway band comprises an outer skirt and a plurality of inner skirts. Each of the inner skirts is connected at the bottom edge of the outer skirt and via a snap connection by protrusion on the inner skirt. The inner skirts also have an inwardly extending protrusion or wing that partially surrounds a stop ledge on the bottle.

Response to Arguments

7. Applicant's arguments filed May 12, 2000 have been fully considered but they are not persuasive.

With respect to applicant's arguments concerning the rejection under 35 USC 112, first paragraph, the claims as amended still lack support in the specification.

Applicant has only described a plurality of inner skirts or a plurality of upper inner and lower inner skirts. As such, applicant is not entitled to claims setting forth two inner skirts, at least one inner skirt or at least one upper inner and at least one lower inner skirt, as this language restricts the number inner skirts(or upper inner and lower inner skirts). There is no showing that applicant's invention would function with two inner skirts, one inner skirt or one upper inner and one lower inner skirt.

With respect to applicant's arguments concerning the "wing" limitation, these are noted, but applicant has not set forth specific structure to the "wing" within the claims. Applicant has only set forth that the wing partially surrounds the ledge of the bottle and is on the inner skirt. As such, the EP reference @ 15 and the Barriac reference @ 34 teach the "wing".

Conclusion

8. This is a CPA of applicant's earlier Application No. 09/325,296. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**

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even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Mon-Thur 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3579 for regular communications and (703)-305-3580 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.


Nathan J. Newhouse
Primary Examiner
Art Unit 3727

March 23, 2001